

18 November 2024

Circular on the Publication of the Markets in Crypto-Assets Act and Other Relevant Legal Instruments

The Malta Financial Services Authority (the 'MFSA' or the 'Authority') is hereby informing the industry of the publication of the following legal instruments which relate to the implementation into local legislation of [Regulation \(EU\) 2024/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets](#) (the 'MiCA Regulation'):

- The Markets in Crypto-Assets Act, 2024, published by virtue of [XXXVI of 2024 – Markets in Crypto-Assets Act, 2024](#);
- The Markets in Crypto-Assets Act (Fees) Regulations, 2024, published by virtue of [L.N. 295 of 2024 - Markets in Crypto-Assets Act \(Fees\) Regulations, 2024](#); and
- The Virtual Financial Assets (Amendment No.2) Regulations, 2024 published by virtue of [L. N. 296 of 2024 - Virtual Financial Assets \(Amendment No. 2\) Regulations, 2024](#)

Markets in Crypto-Assets Act, 2024

While the MiCA Regulation is directly applicable in EU member states, there are a number of provisions of the said Regulation which permit the aforementioned states certain discretion as to the implementation thereof. This would include those provisions relating to the appointment of the MFSA as the competent authority for the purposes of the MiCA Regulation, and the powers granted to it for the purpose of carrying out its functions at law.

The Markets in Crypto-Assets Act, 2024 goes a step further by replicating certain provisions of the MiCA Regulation which do not require implementation due to the direct applicability of the said Regulation. These are generally provisions which impose obligations on third parties vis-à-vis the MFSA specifically. They are being included so that it is made clear when one would fall within the remit of the MFSA, as opposed to that of any other foreign competent authority appointed under the MiCA Regulation.

Moreover, the abovementioned provisions are being included to provide for new categories of authorised and notified persons, namely issuers of asset-referenced tokens, e-money tokens and other crypto-assets, as well as crypto-asset service providers, which are separate and distinct from any category of authorised or notified persons regulated under national law. Considering that local financial services regulation generally provides for a legal framework for every category of authorised or notified persons within the financial

service sector, it was deemed appropriate that these new categories of authorised and notified persons should have a legal framework of their own. In other words, issuers of asset-referenced tokens, e-money tokens and other crypto-assets, as well as crypto-asset service providers shall be regulated under a new and separate Act which is to be administered by the Authority.

The Markets in Crypto-Assets Act, 2024 includes certain provisions which supplement the provisions of the MiCA Regulation, such as the provisions relating to appeals, offences, and confidentiality obligations.

With respect to the amendments to the Virtual Financial Assets Act, as mentioned above these are meant to cater for the coming into force of the MiCA Regulation and the consequential phasing out of the local regulatory framework relating to crypto-assets.

Markets in Crypto-Assets Act (Fees) Regulations, 2024

The Title of these regulations is the Markets in Crypto-Assets Act (Fees) Regulations, 2024 (the 'Regulations'). They are to be issued under the Markets in Crypto-Assets Act (the 'Act').

The Regulations form part of the exercise being carried out locally to implement the MiCA Regulation. The MiCA Regulation, as implemented in the Act, provides for notification and authorisation requirements, as applicable, to which issuers of asset-referenced tokens, e-money tokens and other crypto-assets, as well as crypto-asset service providers are subject. It also provides for the supervision of such persons by the competent authority, which would be the MFSA as mentioned above. In light of the foregoing, fees are being stipulated in the Regulations which are due to the competent authority in connection with an application for authorisation or the extension thereof, a notification or a request for modification submitted thereto in terms of the MiCA Regulation and the Act; and the supervision of those persons as aforementioned where applicable.

The Regulations apply to the following persons which fall within the scope of the MiCA Regulation and the Act: (i) crypto-asset service providers; (ii) issuers of asset-references tokens; (iii) issuers of electronic money tokens; and (iv) issuers of any other crypto-assets.

These Regulations provide for the due date of all such fees as mentioned above. They also specify that the fees established therein are not refundable, nor shall they be prorated unless otherwise stated in the regulations. In formulating the applicable fees, due regard was given to existing fees of a similar nature which are due to the Authority at law in relation to activities which are comparable to the issuance of crypto-assets and the provision of crypto-asset services.

The fees stipulated in the Regulations are intended to ensure proportionality. In view of the foregoing, the following factors were considered in the formulation of the said fees: (i) the complexity of the business model; (ii) the volume of business; and (iii) the cost of the resources which the Authority would require to carry out the relevant functions under the MiCA Regulation and the Act.

Virtual Financial Assets (Amendment No.2) Regulations, 2024

The title of these regulations is the Virtual Financial Assets (Amendment No. 2) Regulations, 2024, (the 'Amending Regulations'), and they amend the Virtual Financial Assets Regulations (the 'Principal Regulations') which were made under the Virtual Financial Assets Act.

The Amending Regulations also form part of the exercise being carried out locally to implement the MiCA Regulation. The Amending Regulations amend the Principal Regulations so that the provisions of the latter cease to apply as the provisions of the MiCA Regulation, the Markets in Crypto-Assets Act and any regulations and rules issued thereunder come into force, in accordance with the dates stipulated in the MiCA Regulation. This includes the establishment of cut-off dates as of which the fees currently applicable in accordance with the Principal Regulations will cease to apply.

These User Guidelines should be read in conjunction with, and as supplementary guidance to, the Amending Regulations and should not be deemed to substitute a thorough reading thereof.

In case of any queries in relation to the Regulations, the MFSA may be contacted on +356 21441155. Queries may also be sent via e-mail to fintechpolicy@mfsa.mt.